

MARK J. BENNETT 2672
Attorney General of Hawaii

HERBERT B.K. LAU 2591
Deputy Attorney General
Department of Attorney
General, State of Hawaii
Labor Division
425 Queen Street
Honolulu, Hawaii 96813
Telephone: 586-1450

2009 AUG 20 PM 3:14

HAWAII LABOR
RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2009-6
DIRECTOR, DEPARTMENT OF LABOR)	(Inspection No. 311432959)
AND INDUSTRIAL RELATIONS,)	
)	STIPULATION AND SETTLEMENT
Complainant,)	AGREEMENT; EXHIBIT A; APPROVAL
)	AND ORDER
vs.)	
)	
HAWAIIAN DREDGING)	
CONSTRUCTION COMPANY, INC.,)	
)	
Respondent.)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent HAWAIIAN DREDGING CONSTRUCTION COMPANY, INC. ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about June 2, 2008, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), initiated an accident inspection of the Respondent's workplace located at 1009 Kapiolani Blvd., Honolulu, Hawaii, 96814.

As a consequence of said inspection, the Director, through HIOSH, issued a Citation and Notification of Penalty on January 7, 2009 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards, and assessed an aggregate penalty of \$10,000.00. *See Exhibit A.*

Respondent contested the Citation on January 30, 2009.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 1009 Kapiolani Blvd., Honolulu, Hawaii, 96814.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule ("HAR") § 12-51-22. Within thirty (30) days of the filing of the instant Stipulation and Settlement Agreement, Respondent shall submit the completed abatement certification to HIOSH; failure to timely do so may result in additional penalties or follow up inspections.

5. The Citation is amended as follows:

a. Citation 1, item 1, alleging a violation of section 12-110-2(a)(3), HAR, is affirmed, and its associated penalty of \$5,000.00 is reduced to \$3,750.00;

b. Citation 1, item 2, alleging a violation of 29 CFR 1926.550(c)(5) [chapter 12-136.1, HAR], and its associated penalty of \$5,000.00, is withdrawn.

6. The Director reduces the aggregate penalty from \$10,000.00 to \$3,750.00, which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Except for the stipulated amendments described above, the Citation is affirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

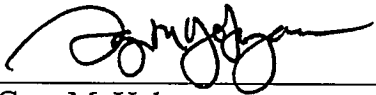
9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

11. Upon approval of this Agreement, the Respondent's letter of contest submitted on January 30, 2009, shall be withdrawn, and all proceedings before the Board shall be dismissed.

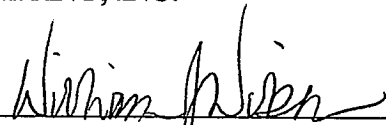
DATED: Honolulu, Hawaii, August 11, 2009.

APPROVED AS TO FORM:



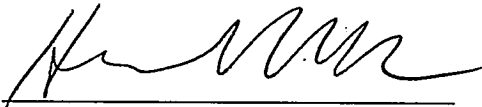
Gary M. Yokoyama
Attorney for Respondent

HAWAII DREDGING CONSTRUCTION
COMPANY, INC.

By: 

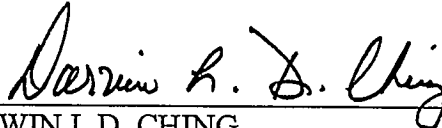
Its William J. Wilson, President

APPROVED AS TO FORM:



HERBERT B.K. LAU
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS

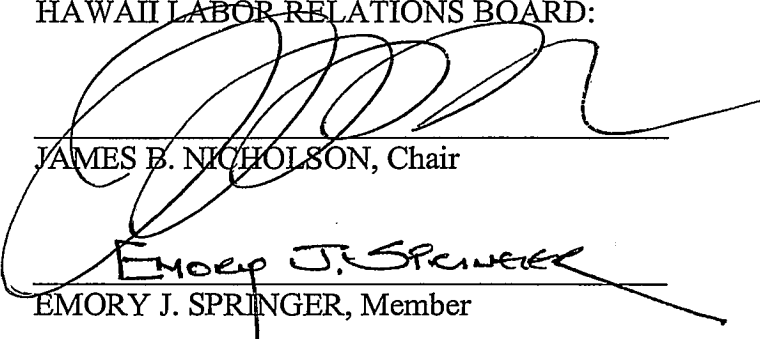


DARWIN L.D. CHING

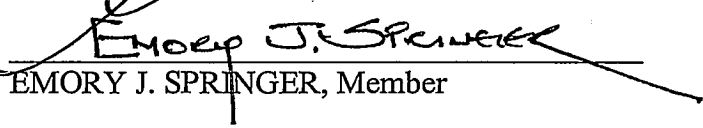
APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 344

DATED: August 20, 2009



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

State of Hawaii

Department of Labor and Industrial Relations

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION 2009 AUG -4 AM 10:28

830 PUNCHBOWL STREET, ROOM 425

HONOLULU, HI 96813

Phone: (808)586-9110 FAX: (808)586-9104

Certified Number: 7006 2150 0004 4051 2768



Citation and Notification of Penalty

To:

Hawaiian Dredging Construction Company Inc
and its successors
PO Box 4088
Honolulu, HI 96813

Inspection Number: 311432959 (Karen
Kamihara)
Inspection Date(s): 06/02/2008- 01/06/2009
Issuance Date: 01/07/2009
OSHA ID: F9171
Optional Report No.: 02408
Inspection Type: Fatality/Catastrophe
Scope of Inspection: Comprehensive Inspection

Inspection Site:

1009 Kapiolani Blvd
Honolulu, HI 96814

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Hawaiian Dredging Construction Company Inc
PO Box 4088
Honolulu, HI 96813

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 01/07/2009. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311432959

Inspection Dates: 06/02/2008 - 01/06/2009

Issuance Date: 01/07/2009



Citation and Notification of Penalty

Company Name: Hawaiian Dredging Construction Company Inc

Inspection Site: 1009 Kapiolani Blvd, Honolulu, HI 96814

Citation 1 Item 1 Type of Violation: Serious

HAR §12-110-2(a)(3) was violated because:

The employer did not effect a safe work place by controlling a hazard associated with tower crane operations at the worksite. The employer had not developed clear work practices/procedures for communication between the crane operator and rigger/signal person. Since clear and continuous communication procedures had not been established, both crane operator and rigger thought the other was watching for potential hazards. Both employees failed to watch a sling moving when the crane moved across part of the construction site. Their failure to watch for overhead hazards resulted in the sling snagging a parked concrete truck boom causing an accident.

§12-110-2(a)(3) states "Every employer shall effect safe work places and practices by eliminating, mitigating, or protecting against existing or potential hazards. Elimination by design, process substitution, or other appropriate methods is preferred because it obviates the need for further employee protection. Modification, using such methods as engineering or administrative controls, isolation, and guarding, shall be used to reduce existing hazards. When this mitigation is feasible, it shall be effected expeditiously, with personal protective equipment required until an acceptable reduction of the hazard in the situation or condition is reached. Whenever it is not feasible to eliminate or reduce hazards to acceptable levels or where hazards continue to exist, personal protective equipment shall be provided and used."

Ancillary References: ASME B30.3-2004, Chapter 3-3 " Construction Tower Cranes" and Crane Institute of America, "Rigging", Procedures - Directing the Operator.

Location: Moana Vista project site

Date By Which Violation Must be Abated:

01/12/2009

Penalty:

\$ 5,000.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Hawaiian Dredging Construction Company Inc
Inspection Site: 1009 Kapiolani Blvd, Honolulu, HI 96814

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1926.550(c)(5) [Refer to chapter 12-136.1, HAR] was violated because:

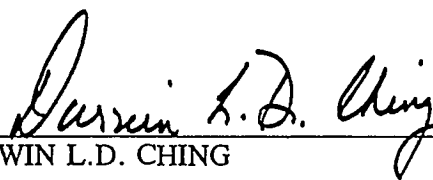
The tower crane operator did not comply with the manufacturer's specifications and limitations applicable to the operation of the Liebherr 420 EC-H 16 hammerhead tower crane. The tower crane operator did not maintain the minimum 0.5 meter clearance of his empty 2-part synthetic sling that was attached to his crane's hook from obstacles within the tower crane's working and traveling area. The sling then snagged a 4-section boom on a parked concrete pump truck. The sling lifted the boom section up into the air before the sling slipped off the boom. As the tip stage of the boom came back down to the ground level, it struck a concrete pump operator working on the ground in front of the truck.

29 CFR 1926.550(c)(5) states "All hammerhead tower cranes in use shall meet the applicable requirements for design, construction, installation, testing, maintenance, inspection, and operation as prescribed by the manufacturer."

Location: Moana Vista project site

Date By Which Violation Must be Abated:
Penalty:

01/12/2009
\$ 5,000.00



DARWIN L.D. CHING
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Hawaiian Dredging Construction Company Inc
Inspection Site: 1009 Kapiolani Blvd, Honolulu, HI 96814
Issuance Date: 01/07/2009

Summary of Penalties for Inspection Number 311432959

Citation 1, Serious = \$ 10,000.00
TOTAL PENALTIES = \$ 10,000.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Safety	Postage	\$ 1.17
	Certified Fee	2.70
	Return Receipt Fee (Endorsement Required)	2.20
	Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees		\$ 6.07

Sent To **Hawaiian Dredging Construction Company, Inc.**
 Street, Apt. No., or PO Box No. **P.O. Box 4088**
 City, State, ZIP+4 **Honolulu, Hawaii 96813**

PS Form 3800, August 2006 See Reverse for Instructions

7006 2150 0004 4051 2768

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Name]</i> C. Date of Delivery <i>11/08/09</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>
<p>1. Article Addressed to: 311432959</p> <p>Ms. Cheryl Arie Acting Safety Director Hawaiian Dredging Construction Company, Inc. P.O. Box 4088 Honolulu, Hawaii 96813</p>	<p>3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label) 7006 2150 0004 4051 2768</p>	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540